

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
DELEGATE DANIEL MARSHALL, III, Vice-chair
ELIZABETH A. PALEN, Executive Director



GENERAL ASSEMBLY BUILDING
201 NORTH 9th STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
(PHONE) 804-786-3591 ext. 259
(FAX) 804-371-0169
epalen@dls.virginia.gov
<http://dls.virginia.gov/commissions/vhc.htm>

VIRGINIA HOUSING COMMISSION

SUMMARY

Short-Term Rental Work Group May 10, 2016, 1:00 PM House Room 3, The Capitol

I. Call to Order

Delegate Christopher Peace, *Chair*, called the meeting to order at 1:00 PM.

Members in attendance: Delegate Christopher Peace, *Chair*; Edward Mullen, *Airbnb Corporation*; David Skiles, *Travel Technology Association*; Erica Gordon, *Hilton Worldwide*; Eric Terry, *Virginia Restaurant & Travel Association*; Amy Hager, *The Bed & Breakfast Association of Virginia*; Sterling Rives, *Virginia Association of Counties*; Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League*; Mark Haskins, *Virginia Department of Taxation*; Chip Dicks, *Virginia Association of Realtors*; Robert Bradshaw, *Independent Insurance Agents of Virginia*; Maggie Ragon, *Commissioner of the Revenue, City of Staunton*; Brian Gordon, *Northern Virginia Apartment Building Association*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Charlottesville Short-Term Rentals

- **Lisa Robertson**, *Chief Deputy City Attorney of Charlottesville*: In September 2015, the City of Charlottesville amended its zoning ordinance to update regulations applicable to for-hire lodgings located within residential dwellings. In the 1960s, Charlottesville had tourist homes, which offered temporary lodging that was defined as anything other than a hotel.
 - These were allowed in R2 zoning districts, and then eventually R3 districts. In the 1990s, the term “tourist home” dropped out of the ordinance but the term “hotel” had broadened.
 - In 2003, the city undertook a comprehensive overview of the zoning ordinance. Mixed-use districts, in recognition of new areas of development, came into play. The broad meaning of hotels was allowed in most of those districts.
 - In 2009, the City of Charlottesville amended its zoning ordinance to include special categories of bed and breakfast: bed and breakfast home stay, bed and breakfast, and bed and breakfast inn. This is also around the time Airbnb was established. Bed and breakfast home stay is the category that allows many of the Airbnb lodgings. It is allowed within owner-occupied residences.

- Once established, there was a blissful period of about six years when this system worked smoothly. Charlottesville, as a college town, is very much in favor of this type of lodging. In late 2014, a zoning administrator received a complaint involving a single-family dwelling. The homeowner allowed the home to be used by a bridal party. There was a lot of noise and revelry, and this was more than the neighborhood could take.
- As a result, we looked at a number of ordinances from around the United States. We didn't feel the need to start over but to tweak what already existed.
- In our ordinance, we have something called a home occupation, where one can operate a business from inside one's residence. This required a zoning permit. We included these homestays as a new type of home occupation.
- **Robertson:** One regulation is that home occupation has to be an accessory to a lawful residential use, which is customarily engaged in by people who live in a home. Other regulations deal with traffic, noise, and visual impacts. For new regulations enacted in 2015, we are requiring proof of permanent residence. There is a new requirement that residence in the home must be for 180 days of the permit year.
 - One is now required to leave contact information of a responsible party, so there is always someone available to address complaints. Under the old homestay, people were allowed to have food service. City officials determined that for use for the category homestay, the option of food service would be removed. As a condition of the annual permit, if there are three or more nuisance complaints, your permit can be revoked.
 - There are provisions of the statewide building code that may apply and tax obligations may apply. However, these issues are separate to zoning compliance. We have a statement that specifies homestays need to provide smoke alarms and extinguishers.
 - The city has tried to not get in the way but to ensure the regulations allow for a harmonious mixture of uses.
- **Eric Terry, Virginia Restaurant & Travel Association:** How many Airbnbs do you have permitted in Charlottesville today, and do you have a sense of percentage compliance?
 - **Robertson:** About 200 on Airbnb. Since the update, we've registered 60 new facilities in addition to the homestay we had under the previous ordinance.
- **Terry:** Are you collecting transient occupancy tax (TOT) and sales taxes on the 60 or the 200?
 - **Robertson:** The facilities that had previously been registered as homestays and new facilities, non-Airbnb, and homestays are paying this TOT, and we believe there are not many collecting sales taxes.

- **Delegate Danny Marshall:** For someone who wants to get their property accepted, talk to us about the process. Does city council have to approve this? Do you go back and survey neighbors?
 - **Robertson:** It is a simple application process, and usually we are able to send people to the commissioner of the revenue's office on the same day.
 - There has been discussion of whether we should notify neighbors that this type of use is occurring in their neighborhood, but ultimately city council decided not to go that route. We do not have the city council involved at all in the permit process.
- **Marshall:** Do you require a certain level of liability insurance or what level?
 - **Robertson:** We do not. We feel an insurance requirement was related to the zoning ordinance. It did come up.
- **Mark Flynn, Governor Appointee:** On the issue of being owner occupied, does the applicant have to be an owner not a long-term tenant?
 - **Robertson:** That is the case right now. This item is still a little unsettled.
- **Amy Hager, The Bed & Breakfast Association of Virginia:** If someone is not living in the dwelling and is just renting the dwelling to short-term lodging, is that under the hotel regulations?
 - **Robertson:** That could be the place. It depends on the district. Business and mixed-use districts allow this.
- **Peace:** If much of the use of short-term rentals is a one-off transaction, how does the city do a permit for that property? Do you issue a temporary permit?
 - **Robertson:** We do not. This was also discussed. We also do not have the staff to monitor this use. It seemed to us that the single permit worked for everyone.
- **Peace:** Short-term use could be up to 180 days of one-off?
 - **Robertson:** It was important to city council that someone actually use each home as their residence, so the 180 days speaks to the time they want the owner to be a resident. This is going to be a difficult enforcement issue. There is an expectation that this is your primary and permanent residence.
- **Peace:** Did the council weigh the number of complaints about parties and noise?
 - **Robertson:** We took a look at police reports and noise violations at places that are rental properties. Complaints at hotels occur much less often. More noise complaints occur in R2 zones than in the lowest density zones.
- **Peace:** But was the city able to conclude that short-term rental was more of a nuisance than other types of dwellings?
 - **Robertson:** No. Noise complaints also must be substantiated in order for the permit to be revoked.
- **Peace:** There are no changes to how the city addresses parking or noise issues?

- **Robertson:** Correct.
- **Peace:** The permit application process is much less onerous than that of getting a special exception or conditional use?
 - **Robertson:** Absolutely.

III. Ideal Legislation and Components

Locality Perspective

- **Neal Menkes, Director of Fiscal Policy, Virginia Municipal League:** VML believes that public policies affecting public safety, taxation, and land use need to adapt to major economic changes but that the state must preserve localities' ability to protect all citizens and to regulate all types of businesses fairly and responsibly.
 - VML believes state and local policies should (1) encourage a level playing field for competing services in the market place; (2) seek to preserve and/or replace local and state tax revenues when a changing economy disrupts collections; (3) ensure safety, reliability, and access for consumers, providers, and the general public; and (4) protect local government's ability to regulate businesses whether they are traditional, electronic, Internet-based, virtual, or otherwise.
 - VML defends the use of local zoning authority in order to protect the public's health and safety and to preserve neighborhoods. Local needs that reflect special circumstances or unique conditions cannot be addressed by a statewide land use action that ignores neighborhood concerns, including affordable housing, criminal activity, parking, and noise.
 - Any legislative proposal must include local registration to identify, at a minimum, the owner (or "operator") and location(s) of the site(s). This is essential for administrative compliance and enforcement of state laws and ordinances. Local registration will also promote accountability of taxes imposed by city and town councils and boards of supervisors. Without local registration, there is no transparency.
 - 88% of the 75 cities, towns, and counties responding to a VML-VACo survey allow some form of renting rooms or entire houses. Renting rooms in a residence or renting entire houses is not without local government policies or precedents. This business activity in Virginia has been going on for centuries. Localities have tailored policies to changes in the marketplace. A "one size fits all" bill will upend local policies carefully drawn to reflect community values and local economic conditions.
 - 52% of respondents in the VML-VACo survey already require registration/licensure for renting a room in residential dwellings for periods of less than 30 days. This requirement is only partially driven by tax issues. Registration ensures that homeowners are providing a safe environment for the public.

- Operators (or their “platforms”) should collect and remit local taxes directly to localities. This is not an overly burdensome requirement.
 - The business “Stay Charlottesville” collects and remits state and local taxes on behalf of the operator.
 - Without special legislation as was done for the local option sales tax, local revenues collected by the state require a state appropriation to be returned. Remitting local taxes to the state adds an unnecessary bureaucratic step. Any legislative proposal must justify the inefficiency of sending local revenues to the state instead of requiring the operator or platform to remit directly to localities.
 - Article X, Section 7 of the Constitution of Virginia – “No money shall be paid out of the State treasury except in pursuance of appropriations made by law.”
- Audits of local transient occupancy taxes cannot be delegated to the Virginia Department of Taxation. Authority to perform such audits must remain with the commissioners of the revenue and local directors of finance.
 - Citizens should have confidence in knowing that local officials can collect, track, and account for all local tax dollars. Online platforms must cooperate with local authorities on tax enforcement and audit issues.
- **Peace:** Have you ever stayed at an Airbnb?
 - **Menkes:** Yes, and I had a positive experience.

Airbnb Perspective

- **Edward Mullen, Reed Smith, LLP:** Airbnb was founded in 2008. It’s a trusted online marketplace for lodging. Airbnb is part of the Sharing Economy, which is a business model powered by new technologies and social tools. Starting in 2015, Airbnb launched an effort to work with governments all around the world to develop rules for limited lodging.
 - Key components in our 2015 Compact included helping ensure our community pays its fair share of hotel and tourist taxes; being transparent with our data and sharing information while protecting the privacy of hosts and guests; working with our community to prevent limited lodging rentals from impacting the availability of long-term housing.
 - There is great value for hosts, consumers, and other businesses and even government with home sharing.
 - We introduced a new bill this year that addresses two issues: The patchwork of local regulations governing short-term rentals and the issue of taxes owed by operators without a feasible means of collection.
 - We tried to set up a statewide collection and remission system with the Department of Taxation. The goal is to do so with one point of entry.

- These are not hotels. These are people's homes, and they shouldn't be treated like hotels. We are happy to be working with you all toward a common goal. Home sharing is not going away, and it holds great value.
- **Ron Rordam**, *Mayor of Blacksburg, Virginia Municipal League*: Does Airbnb have a definition of what a residence is?
 - **Mullen**: I'm not sure that Airbnb's definition is material as much as the state's definition. I believe we had one in our statute, but I'm not exactly sure what it is.
- **Rordam**: How does this transcend occupancy limits?
 - **Mullen**: This would not have impacted that at all. Nuisances, the brothel rule, would not have been impacted by our legislation.
- **Rordam**: Is there a mechanism to pull a home from your website where a home is not a residence and it is advertised on Airbnb?
 - **Mullen**: I believe they do take complaints and work with local government on removing homes, but I cannot speak to that exact process.
- **Sterling Rives**, *Virginia Association of Counties*: The goal of assuring transparency with data while assuring privacy of hosts and guests: I'd like to hear what those privacy concerns are?
 - **Mullen**: I think the exact line of transparency and privacy needs to be worked out in this process. Our vision was that there was no registration at all. We are looking for application of general applicable ordinances. We were looking to help them pay taxes.
- **Rives**: To what extent do law-enforcement and safety officials need to know about short-term rentals?
- **Peace**: And long-term rentals.
- **Flynn**: With home occupation, the issue is the impact on the neighbors. What is your client's attitude toward that kind of authority?
 - **Mullen**: A generally applicable requirement, not specific to short-term rental, would not have been touched by our legislation.
- **Terry**: Has Airbnb looked into compliance with regulation?
 - **Mullen**: I think that is something that legislation can work through.
- **Hager**: What information are you collecting from the host?
 - **Mullen**: I wish I could answer that. I'm happy to provide it at a later date.
- **Peace**: How would I find a residence on the list?
 - **Mullen**: Going on the website, you find a listing that interests you. You make a request of the host. Then they may agree to let you stay in their home.
- **Peace**: So these are known locations?

- **Mullen:** I'm not sure what's known until you get to a certain level of the process.
- **Flynn:** When I was looking on the initial level, you see the neighborhood, but not the address.
- **Maggie Ragon, *Commissioner of the Revenue, City of Staunton*:** In the legislation, limited residential lodging for fewer than 45 days does not constitute a business. How did you arrive at that number?
 - **Mullen:** The effort here was to have a specific rule. We started with 90 and then cut it in half. There is no perfect number; this is just the one we came up with.

Hospitality Industry Perspective

- **Julia Hammond, *Eckert Seaman's*:** The hospitality industry is a large industry. Basic regulations have to do with ABC licensing issues, zoning, building code, fire suppression, carbon monoxide, parking, permitting, innkeeper rules, health department and inspection, pools, refrigeration, pest control, and insurance.
 - The hospitality industry welcomes competition, but we want a fair and level playing field.
- **Christopher Lloyd, *McGuire Woods Consulting*:** If we are going to deal with this from a tax perspective, zoning perspective, let's deal with all types of properties. People are taking on entire homes or multi-unit buildings. The concern is they don't comply with the long list of regulations. We need to deal with the "illegal hotel" issue.
 - If someone is running a business from their home, that should be treated as a business.
 - Regarding de-listing, rentals that cannot demonstrate compliance with laws should not be allowed to use the hosting platform.
 - Transparency regarding rentals should be listed with Tax ID/license information and a method for reporting violations.
 - Regarding accountability, just like hotels, tax collection and remittance information should be subject to audit by the state and locality.
 - Regarding data collection to assist with tourist promotion, aggregated stay information should be available to tourism offices.
 - These are our general concerns.
- **Flynn:** When does a home occupation become a business? How does this process work for you?
 - **Lloyd:** There was an alternate bill the hospitality industry put together. There is a provision in Virginia tax law that if you have gross receipts in your homerun business of more than \$4,000, then that is a threshold if you are subject to local licensure and tax. We picked that as an arbitrary standard.

- **Ragon:** Did I hear correctly that Hilton operates 150 properties in the Commonwealth?
 - **Hammond:** Yes.
- **Ragon:** So then you turn over thousands of guests in a year and would be collecting and remitting occupancy taxes to localities. And that is common?
 - **Hammond:** Yes.
 - **Lloyd:** Having one set of rules for everyone would be great. The hotel industry complies with 138 standards, and they continue to make it work.
- **Terry:** The Expedia group is able to collect taxes properly. It's not an insurmountable task.
- **Peace:** Do you agree with the Charlottesville rule that a permit is not needed for a one-off rental?
 - **Lloyd:** I agree that a locality can determine what is right for its community. A statewide model of some uniformity makes a great deal of sense.
- **Peace:** Is that equally on the land use preemption side as well as the tax side?
 - **Lloyd:** I think it makes sense to have some uniformity with collection and remission of taxes. The concern was the lack of transparency and accountability that went along with that.
- **Peace:** Can you speak to the enforcement of that mechanism?
 - **Hammond:** Comparing rules with local zoning and statewide collection, local zoning is for the primary personal resident. Collection and remission was for anyone listed on Airbnb, which includes other types of properties, so they're not quite comparable.
- **Peace:** Because the legislation was silent to the non-primary resident, your concern was that the statewide law would occur for that use without the statewide zoning standard?
 - **Hammond:** I believe it was for all properties on Airbnb, and they wouldn't be differentiating.
- **Peace:** Is it your opinion that localities would not be prohibiting secondary residences?
 - **Lloyd:** A number of localities are undertaking action to prohibit or permit this. We already have the locality's rules, and then the state comes in and wipes the slate clean.
- **Peace:** We should look into how to address things that are already in place. I believe the hospitality industry commissioned the Penn State study.
- **David Skiles, Travel Technology Association:** Do you have a set number of meetings? Is there going to be draft legislation?

- **Peace:** We have a next meeting set, but we don't have a set number of meetings. The enactment clause does speak to draft legislation.

- **Rives:** I would like for this group to look into public safety.

IV. Public Comment

- **Delegate Peace** asked for any public comment.

V. Adjourn

- Upon hearing no further request to comment, **Delegate Peace** adjourned the meeting at 2:55 PM.